



One South Montana Avenue, Suite M1 · Helena, MT 59601
Phone: 406-443-4032 · Fax: 406-443-4220 · Toll Free: 800-477-1864
Email: mtmar@montanarealtors.org · Web: www.montanarealtors.org

EXHIBIT 1
DATE 3/23/2011
SB 347

Bill Memo

SB 347 – Revise the Private Property Assessment Act (PPAA)

Sponsor: Sen. Bob Lake

Hearing

House Judiciary, Mar. 23, 8 am, Rm 137

Contact: Glenn Oppel, Government Affairs Director, 431-3685, goppel@montanarealtors.org

Bill Purpose:

By amending the Private Property Assessment Act, Section 2-10-101 et seq., MCA ("PPAA"), SB 347 proposes to increase government accountability. As amended in the Senate, the revisions to the PPAA are new sections requiring oversight by interested parties and creating a right for private property owners to bring a lawsuit to invalidate a state agency's action when that agency takes action without performing or completing an impact assessment.

Under the PPAA, state agencies are required to pre-evaluate their actions through impact assessments, which track attorney general guidelines, for the purpose of preventing unnecessary taking or damaging impacts on private property. However, there is no mechanism for property owners to obtain relief if a state agency fails to perform, or inadequately performs, an impact assessment. There is also no mechanism for public participation and oversight. Evidence and past experience reveals that because of the lack of accountability and oversight mechanisms in the PPAA, state agencies tend to go through the motions of filling out the checklist provided by the attorney general's office, but do not perform meaningful impact assessments.

Establishing in the PPAA the possibility of consequences and oversight is likely to restore the PPAA to its original purpose—as a private property protection measure, rather than an ineffective bureaucratic procedure. As amended, the PPAA should encourage government decision-makers to evaluate more carefully the effects of their administrative and regulatory actions on constitutionally protected rights in property.

Analysis by Section

NEW SECTION. Section 1. Notice to public and interested persons. (1) After an impact assessment has been completed, and regardless of the findings in the assessment, the state agency that performed the impact assessment shall provide notice to the public and interested persons of its intent to engage in the proposed action. The notice must be provided through use of electronic e-mail lists and postal mail lists to all persons who have elected to be notified of impact assessments and through the use of a common website used by all state agencies.

(a) The electronic e-mail lists and postal mail lists must be established to allow interested persons to be on lists notifying them of impact assessments of all state agencies or of specific information based on agency name or geographical location of a proposed action and may provide notice based on other criteria that would promote public awareness of proposed actions.

(b) The website must be created to allow access to impact assessments of all state agencies or to specific information based on agency name or geographical location of a proposed action and may also be based on other criteria that would promote public awareness of proposed actions. The website must provide a summary of the impact assessment and a link to a source for the complete impact assessment.

(2) If due to time constraints a state agency is compelled to take an action allowed by this part before completion of an impact assessment, it shall, within 3 days of learning of the requirement to take the action, post notice of the action and provide a brief explanation of the action, the need for expedited action, and an estimate of when the action will be completed and the expected availability of the completed summary and impact statement.

(3) Unless the action may be taken without a completed impact statement as provided in this part, the state agency may not take the proposed action until it has completed and posted the impact statement.

(4) The state agency shall update the assessment and provide notice to the public if the action is not adopted before the 180th day after the date the original notice was given.

Rationale:

This amendment gives “teeth” to the PPAA by requiring public oversight of the impact assessment process, in that interested parties may now review completed assessments and monitor the actions of state agencies that may have an impact on the value of their property. Using the mechanism of interested parties is not unprecedented; the attorney general keeps a list to which he sends out any new AG opinions, and each state agency has a list to which it forwards proposed rules. Requiring that an agency forward its assessment to a list of interested parties is cost-effective and would accomplish public oversight and participation.

NEW SECTION. **Section 2. Suit to invalidate state agency action.** (1) A state agency's adopted action is not valid unless the action was taken in compliance with [section 5 1]. A private property owner affected by a state agency action taken without fulfilling the requirements of [section 5 1] may bring suit for a declaration of invalidity of the action.

(2) A suit under this section must be filed in a court in the county in which the property owner's affected property is located. If the affected property is located in more than one county, the property owner may file suit in any county in which the affected property is located.

(3) The court shall award a property owner who prevails in a suit under this section reasonable and necessary attorney fees and court costs.

Rationale:

This amendment gives additional “teeth” to the PPAA by empowering private property owners with a cause of action when a state agency fails to comply with the requirements of the Act—namely, to complete an impact assessment.